

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PENINSULAR TECHNOLOGIES, LLC,

Plaintiff,

v.

Case No. 04-CV-00305-DT

WINCAN AMERICA, INC. et al.,

Defendants.

ORDER OF DISMISSAL

The court conducted a telephone conference in the above-captioned matter on January 26, 2006. During that conference, counsel for both parties represented to the court that the parties had reached a settlement agreement, which they reduced to writing, signed and dated during a mediation session held in November 2005. A copy of the memorandum of settlement has been provided to the court as an exhibit to a pending motion. Counsel also represented to the court that they had encountered some areas of disagreement in their effort to further formalize the settlement terms but expect to be able to salvage the agreement. Based on these representations and others that counsel made during the conference, the court will dismiss this case without prejudice and subject to certain conditions. Accordingly,

IT IS ORDERED that this matter is DISMISSED WITHOUT PREJUDICE to the right of either party to unilaterally reinstate the case within sixty days of the date of this order if the objects of the settlement agreement are not effectuated to the satisfaction of

the moving party within that sixty day period. If the case is not reinstated within sixty days, the dismissal will become with prejudice.¹

IT IS ALSO ORDERED that the parties shall forthwith continue their good faith efforts to put in final form the presently unstated terms of settlement; the parties shall return to the original mediator if in thirty days from the date of this order they are not successful. The mediator shall be tasked with facilitating the final form of the agreement and his/her fees and expenses shall be borne evenly by the parties. If the mediator so directs, the parties may be required to participate in person.

IT IS FURTHER ORDERED that Defendants' "Motion to Dismiss This Lawsuit With Prejudice Pursuant To Settlement Agreement" [Dkt. # 145] is DENIED AS MOOT in light of this order. The court may direct that the motion be reinstated for consideration in the event that the case is reinstated.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 31, 2006

¹If the case is reinstated and the court becomes aware that one party has caused undue expense to the other through the process of finalizing the agreement, the court may consider ordering reimbursement of expenses incurred in pursuit of finalization. At this juncture, the court is especially focused upon undue expense being visited upon an out-of-state party being required to travel to Michigan to pursue a finalized settlement.

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 31, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522